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OCT 19 2009 DJ

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

9 UNITED STATES DISTRICT COURT
10 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

11 RAYMOND SCOTT RIPLEY, individually,
12 and as class representative,

13 Plaintiff,

14 v.

15 BRIDGESTONE AMERICAS INC., a
16 Nevada corporation,

17 Defendant.
18

CV9 1482 MJP

No.

COMPLAINT —CLASS ACTION



09-CV-01482-CMP

19 I. NATURE OF ACTION

20 1.1. Plaintiff brings this class action for money damages and statutory penalties for
21 wage law violations on behalf of himself and current and former employees of Defendant
22 pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.*, the Washington
23 Minimum Wage Act ("MWA"), RCW Ch. 49.46, and the Washington Wage Rebate Act,
24 RCW Ch. 49.52.
25

26 1.2. Plaintiff also brings individual claims for money damages and statutory

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COMPLAINT —CLASS ACTION - 1

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SEA 29802 JLL

1 penalties against Defendant for violation of the Family Medical Leave Act ("FMLA"), 29
2 U.S.C. § 2601 *et seq.*, and for wrongful termination in violation of public policy.

3 **II. JURISDICTION AND VENUE**

4 2.1. The federal district court for the Western District of Washington has
5 jurisdiction over Plaintiff's and the putative class members' claims arising under the FLSA
6 pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b) and supplemental jurisdiction over
7 Plaintiff's and the putative class members' state law wage claims pursuant to 28 U.S.C. §
8 1367.
9

10 2.2. This Court has jurisdiction over Plaintiff's FMLA claims pursuant to 28
11 U.S.C. § 1331 and 29 U.S.C. § 2617 and supplemental jurisdiction over Plaintiff's state law
12 claim for wrongful termination pursuant to 28 U.S.C. § 1367.

13 2.3. Venue in this Court is appropriate pursuant to 28 U.S.C. § 1391.

14 2.4. All or a significant portion of the acts and omissions alleged herein took place
15 in Snohomish County in the State of Washington.
16

17 **III. PARTIES**

18 3.1. Plaintiff Raymond Scott Ripley is a resident of Everett, Washington. He was
19 formerly employed by Defendant as an automotive technician at the Defendant's "Firestone
20 Complete Auto Care" store in Mill Creek, Washington.

21 3.2. Defendant Bridgestone Americas Inc. is a Nevada corporation with a principal
22 place of business in Nashville, Tennessee.
23

24 3.3. Defendant does business in the State of Washington and throughout the
25 United States at various retail locations, several of which do business under the name of
26 Firestone Complete Auto Care. Defendant is an "employer" for purposes of the wage and

1 hour laws at issue in this case.

2 3.4. On information and belief, Defendant employs more than 50 people in the
3 greater Puget Sound area.

4 **IV. FACTUAL ALLEGATIONS**

5 4.1. Plaintiff and members of the proposed class work and have worked for
6 Defendant as automotive technicians and in other similar positions.

7 4.2. Plaintiff and class members work and have worked in excess of 40 hours per
8 week, for which Defendant has not paid them required overtime wages (i.e., one and one-half
9 times the regular rate of pay for hours worked in excess of 40 hours a week) for all time
10 worked.
11

12 4.3. Defendant knew that Plaintiff and other class members were working in
13 excess of 40 hours per week without receipt of required overtime wages, and nevertheless
14 continued to require and allow such pay practices to continue.
15

16 4.4. In failing to adequately compensate Plaintiff and members of the class for
17 their overtime work, Defendant has acted willfully and with the intent of depriving Plaintiff
18 and members of the class of the requisite overtime compensation.

19 4.5. Plaintiff worked for Defendant for approximately 18 years before he was fired
20 while out on medical leave. During the twelve months prior to his termination, Plaintiff
21 worked well over 1,250 hours and took fewer than two weeks off.
22

23 4.6. While at work on Monday, April 6, 2009, Plaintiff experienced severe flu-like
24 symptoms, including vomiting. Plaintiff was forced to stay home for the next several days,
25 during which he kept in contact with his store manager. When Plaintiff's condition did not
26 improve by Thursday or Friday of that week, his store manager instructed him to seek

1 medical attention and get a doctor's release before returning to work.

2 4.7. The following Monday, April 13, 2009, Plaintiff checked into Providence
3 Regional Medical Center in Everett where he spent several hours undergoing a variety of
4 tests so the doctors could determine the cause of his illness. Sometime that day or the next,
5 the service manager left a voicemail on Plaintiff's phone telling him he was fired.
6

7 4.8. Plaintiff's condition improved over the next few days; he would have been
8 able to return to work on or around Monday, April 20, 2009 had he not been fired.

9 **V. COLLECTIVE ACTION ALLEGATIONS**

10 5.1. Plaintiff files this action on behalf of himself and similarly situated co-
11 workers pursuant to the FLSA, 29 U.S.C. § 216(b). The class of potential plaintiffs included
12 in this collective action includes all past and present employees of Defendant working in the
13 United States as automotive technicians and those holding similar positions at any time
14 during the three years preceding the filing of this complaint.
15

16 5.2. The employees so described are similarly situated to plaintiffs with respect to
17 the legal and factual issues raised by this action.

18 **VI. CLASS ACTION ALLEGATIONS**

19 6.1. Plaintiff also seeks to represent all past and present employees of Defendant
20 working in Washington as automotive technicians and those holding similar positions at any
21 time during the three years preceding the filing of this complaint, pursuant to the Washington
22 MWA and related state wage laws.
23

24 6.2. The action is properly maintainable under Fed. R. Civ. P. 23(a) and (b).

25 6.3. The class described in paragraph 6.1 is sufficiently numerous such that joinder
26 of all of them is impractical, as required by Fed. R. Civ. P. 23(a)(1).

1 6.4. Pursuant to Fed. R. Civ. P. 23(a)(2), there are common questions of law and
2 fact including, but not limited to, whether Defendant failed to pay class members overtime
3 wages for all work in excess of 40 hours per week.

4 6.5. Pursuant to Fed. R. Civ. P. 23(a)(3), the class representative's wage and hour
5 claim is typical of the claims of all class members and of Defendant's anticipated affirmative
6 defenses thereto.

7 6.6. The class representative will fairly and adequately protect the interests of the
8 class as required by Fed. R. Civ. P. 23(a)(4).

9 6.7. Pursuant to Fed. R. Civ. P. 23(b)(3), class certification is appropriate here
10 because questions of law or fact common to members of the class predominate over any
11 questions affecting only individual members, and because a class action is superior to other
12 questions affecting only individual members, and because a class action is superior to other
13 available methods for the fair and efficient adjudication of the controversy.

14
15 **VII. FIRST CAUSE OF ACTION - CLASSWIDE FAILURE TO PAY OVERTIME**
16 **WAGES IN VIOLATION OF THE FAIR LABOR STANDARDS ACT**

17 7.1. Plaintiff restates and realleges the allegations set forth in paragraphs 1.1
18 through 4.4. and 5.1 through 5.2 above.

19 7.2. Defendant's failure to pay Plaintiff and similarly situated employees one and
20 one-half their regular rate of pay for hours worked in excess of 40 hours in their workweek
21 constitutes a violation of the FLSA, 29 U.S.C. § 207, *et. seq.*

22 7.3. Defendant's violations were willful, thereby entitling Plaintiff and similarly
23 situated employees to the three-year FLSA statute of limitations.

24 7.4. As a result of Defendant's acts and omissions, Defendant is liable for
25 overtime wages and liquidated damages under 29 U.S.C. 216(b) in amounts as will be proven
26

1 at trial.

2 **VIII. SECOND CAUSE OF ACTION - CLASSWIDE FAILURE TO PAY**
 3 **OVERTIME WAGES IN VIOLATION OF THE MINIMUM WAGE ACT**

4 8.1. Plaintiff restates and realleges the allegations set forth in paragraphs 1.1
 5 through 4.4. and 6.1 through 6.7 above.

6 8.2. Defendant's failure to pay class members one and one-half times their regular
 7 rate of pay for hours worked in excess of 40 hours in their workweek constitutes a violation
 8 of RCW 49.46.130.

9 8.3. As a result of Defendant's acts and omissions, Plaintiff and the class members
 10 have been damaged in amounts as will be proven at trial.

11
 12 **IX. THIRD CAUSE OF ACTION - CLASSWIDE WILLFUL WITHHOLDING OF**
 13 **WAGES IN VIOLATION OF RCW § 49.52**

14 9.1. Plaintiff restates and realleges the allegations set forth in paragraphs 1.1
 15 through 4.4. and 6.1 through 6.7 above.

16 9.2. By the foregoing, Defendant's actions constitute a willful withholding of
 17 wages in violation of RCW 49.52.050 and .070.

18 9.3. As a direct and proximate result of the foregoing, Plaintiff and the class
 19 members have suffered and continue to suffer loss of compensation in amounts as will be
 20 proven at trial.

21
 22 **X. FOURTH CAUSE OF ACTION - INDIVIDUAL CLAIM FOR FAMILY**
 23 **MEDICAL LEAVE ACT VIOLATION**

24 10.1. Plaintiff restates and realleges the allegations set forth in paragraphs 1.1
 25 through 4.8 above.

26 10.2. Defendant has wrongfully discharged Plaintiff and violated his right to unpaid
 leave for his serious health condition in violation of the FMLA, 29 U.S.C. §§ 2612 and 2615.

1 10.3. As a result of Defendant's acts and omissions, Plaintiff has been damaged in
2 amounts as will be proven at trial.

3 **XI. FIFTH CAUSE OF ACTION – INDIVIDUAL CLAIM FOR WRONGFUL**
4 **TERMINATION IN VIOLATION OF PUBLIC POLICY**

5 11.1. Plaintiff realleges paragraphs 1.1 through 4.8 above.

6 11.2. As a result of the foregoing events, Plaintiff was wrongfully terminated in
7 violation of public policy under the laws of the State of Washington.

8 11.3. As a result of Defendant's acts and omissions, Plaintiff has been damaged in
9 amounts as will be proven at trial.

10 **XII. PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff requests this Court to enter an order granting him and class
12 members the following relief:

13 a) Certification of Plaintiff's First Cause of Action as a collective action
14 pursuant to 29 U.S.C. § 216(b);

15 b) Certification of Plaintiff's Second and Third Causes of Action as a
16 class action pursuant to Fed. R. Civ. P. 23, the MWA, RCW 49.48 and RCW 49.52;

17 c) Court approved notice of the pendency of this collective action to
18 similarly situated employees pursuant to the FLSA, 29 U.S.C. § 216(b);

19 d) Damages for unpaid overtime wages in amounts to be proven at trial;

20 e) Exemplary damages in amounts equal to double the overtime wages
21 due to Plaintiff and the class members, pursuant to RCW 49.52.070;

22 f) Liquidated damages pursuant to the FLSA, 29 U.S.C. § 216(b);

23 g) Damages for lost wages resulting from Defendant's violation of the
24 FMLA and wrongful termination of Plaintiff pursuant to the FMLA, 29 U.S.C. § 2617(a), and
25
26

1 Washington common law;

2 h) Damages for actual monetary losses resulting from Defendant's
3 violation of the FMLA and wrongful termination of Plaintiff pursuant to the FMLA, 29
4 U.S.C. § 2617(a) and Washington common law;

5 i) Liquidated damages pursuant to the FMLA, 29 U.S.C. § 2617(a);


6 j) Attorneys' fees and costs pursuant to 29 U.S.C. § 216(b), 29 U.S.C. §
7 2617(a), RCW 49.46.090, RCW 49.48.030, and RCW 49.52.070;

8 k) Prejudgment interest; and

9 l) Such other and further relief as the Court deems just and proper.

10 DATED this 16th day of October, 2009.

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13 SCHROETER, GOLDMARK & BENDER

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15 
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18 Counsel for Plaintiff
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